

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 6/16/2015	(3) CONTACT/PHONE Rob Fitzroy, Environmental Resource Specialist / (805) 781-5179	
(4) SUBJECT Hearing to consider an appeal by the Sierra Club of the Planning Commission's approval of Conditional Use Permit DRC2014-00015 (California Flats Solar Project) to construct, operate, and maintain a 3.3 mile access road and temporary construction staging areas near the Highway 41/46 split, to serve an approved 280-megawatt (MW) solar power facility located in unincorporated southeastern Monterey County, and consider the Final Environmental Impact Report certified by Monterey County. District 1.			
(5) RECOMMENDED ACTION It is recommended that the Board: <ol style="list-style-type: none"> 1. Hold the public hearing on the appeal of the Planning Commission's approval as set forth in the staff report and attachments. 2. Adopt and instruct the chairman to sign the resolution to affirm the Planning Commission's decision and approve the Conditional Use Permit based on the findings and conditions in Attachment 1, Exhibits A and B. 			
(6) FUNDING SOURCE(S) General Fund / Appeal Fee	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Hearing (Time Est. <u>60</u>) <input type="checkbox"/> Board Business (Time Est. <u> </u>)			
(11) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW Lisa Howe			
(18) SUPERVISOR DISTRICT(S) District 1.			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Rob Fitzroy, Environmental Resource Specialist

VIA: Ellen Carroll, Planning Manager / Environmental Coordinator

DATE: 6/16/2015

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RECOMMENDATION

It is recommended that the Board:

1. Hold the public hearing on the appeal of the Planning Commission's approval as set forth in the staff report and attachments.
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DISCUSSION

Background

On February 10, 2015, the Monterey County Board of Supervisors approved the California Flats (CalFlats) Solar project. CalFlats is a 280-megawatt (MW) alternating current (AC) photovoltaic (PV) solar power facility in unincorporated southeastern Monterey County, approximately seven miles southeast of the community of Parkfield and 25 miles northeast of the City of Paso Robles, near the borders of Monterey, San Luis Obispo, Kings and Fresno counties.

The project will be built and operated on an approximately 3,000-acre portion of an existing 72,000-acre cattle ranch, known as the "Jack Ranch." The site is optimal for solar energy development, and has been identified as a Competitive Renewable Energy Zone (CREZ) under the State's Renewable Energy Transmission Initiative (RETI). Moreover, an existing 230 kilovolt (kV) transmission line with available transmission capacity, the Morro Bay-Gates line, transects the site.

Prior to approving the CalFlats project, the Monterey County Board of Supervisors certified the Final Environmental Impact Report (EIR) prepared for the project. In certifying the EIR, the Board made findings that the EIR had been completed in compliance with CEQA; that the EIR was presented and reviewed by the Board; that the information contained in the Final EIR was considered by the Board prior to approving the project; and that EIR reflects the County of Monterey's independent judgment and analysis. The Final EIR includes a letter from the San Luis Obispo County planning staff concurring with the EIR findings.

Jurisdictional Authority

Monterey County is the Lead Agency for this project, as the majority of the project is located within Monterey County. San Luis Obispo County is a Responsible Agency and is responsible for permitting portions of the project within the County's respective boundaries. The project components within San Luis Obispo County are limited to improvements to 3.3 miles of existing agricultural road and establishment of temporary construction staging areas, which require a Conditional Use Permit.

Proposed Improvements within San Luis Obispo County

The access road to the CalFlats Solar facility – during both construction and project operation – would be an existing 5.6-mile private ranch road from Highway 41, approximately 3.3 miles of which is located in San Luis Obispo County. The access road is located approximately 1 mile north of the Highway 41/46 split, along Highway 41 (Hwy 41) on an unnamed ranch road. Please refer to project graphics in Attachment 5.

Currently, this private ranch road is approximately 15 to 20 feet wide, with the narrowest sections near each of the ten (10) existing drainage crossings. To accommodate the proposed project, this existing access road must be widened to 30 feet and resurfaced with aggregate base material. In addition, the size of existing culverts must be increased to better match the existing channel capacity and to accommodate the added roadway width. The access road must also include turnouts to accommodate emergency vehicle access. Turnouts would be constructed within the boundaries of the 30-foot wide access road alignment. In addition, an existing access gate would be relocated further north from Hwy 41 (i.e. interior to the site) to accommodate truck queuing outside of the Hwy 41 right-of-way while the gate is being unlocked and opened. This gate is necessary to prevent public access into the facility.

Where the existing access road intersects with State Route (SR) 41, several improvements are proposed to provide safe ingress and egress and sufficient turning pockets for construction traffic. Improvements would include the construction of one new northbound left turn lane and one new southbound right turn lane, vehicle storage space, lane taper striping, and lighting. These improvements to Hwy 41 are within the permit jurisdiction of Caltrans. The project also includes a four-acre temporary construction and material staging area north of Hwy 41. This area would be used throughout construction for vehicle queuing and deliveries. An additional 0.5-acre temporary construction staging area would also be located south of Hwy 41. This area would be used during construction of Hwy 41 improvements.

The project would take approximately 2-3 years to construct and will have a maximum peak work force of up to 816 workers. The average daily work force is estimated to be 400 workers. Workers would be shuttled into the project site. The shuttle service would transport approximately 95% of the anticipated construction work force (not including visitors, management, monitors/inspectors, etc.) on a daily basis from designated employee shuttle park-and-ride locations. Use of the shuttle program would be mandated as a condition of employment. Shuttle park-and-ride lots would be located west of the site on SR 46 in Paso Robles, Cuesta College North County Campus northwest of the site on Highway 101 in King City (Wild Horse Café) and southeast of the project site near the intersection of SR 46 and SR 33 (Blackwell's Corner).

Environmental Review

The EIR as certified by Monterey County on February 10, 2015 evaluated environmental impacts associated with the proposed CalFlats Solar Project in both Monterey County and San Luis Obispo County. Attachment 6 provides a summary of the environmental effects of the project specific to San Luis Obispo County. For greater detail on the environmental issues or alternatives analysis, or impacts in Monterey County, please refer to the EIR.

The significant and unavoidable (Class 1) impacts associated with the project (in either county) would be temporary air quality and traffic impacts during project construction. Despite implementation of mitigation measures to reduce emissions, PM10 and NOx emissions during construction activities (and potentially during future decommissioning activities) would exceed APCD thresholds. In addition, project-generated traffic during the construction phase would contribute an estimated 218 daily trips to a segment of SR 46 between Hwy 41 and Branch Road that currently operates at an unacceptable level of service (LOS). Although this temporary construction traffic would not reduce the LOS from LOS E to LOS F, the incremental impact is nevertheless considered significant. However, all ongoing operational impacts (and other temporary impacts) would be mitigated to less than significant levels. It should also be noted that the project's incremental increase in the number of vehicles on roadways as a result of ongoing operations would be balanced by displaced emissions associated with the project's generation of renewable energy that would reduce demand for new fossil fuel-fired facilities. The net result of this would be reduced operational air pollutant emissions and a resulting long-

term beneficial impact on air quality.

The attached conditions of approval (Attachment 1) incorporate all mitigation measures that have been identified for impacts in San Luis Obispo County and incorporate by reference a Mitigation Monitoring and Reporting Plan (MMRP).

In preparing the MMRP for impacts in San Luis Obispo County, staff has ensured to the extent feasible that the MMRP is consistent with the MMRP adopted by Monterey County. This will simplify mitigation monitoring and compliance as the project is implemented.

Statement of Overriding Considerations

Although significant and unavoidable impacts associated with air quality and traffic are temporary, the County is required to prepare a Statement of Overriding Considerations to show that other benefits outweigh these significant environmental impacts in order to approve the project. Of particular importance is that the solar project, while located in Monterey County, is located within the same air basin as San Luis Obispo County. The solar project would, in part, provide a clean, renewable source of energy and result in an overall improvement to air quality and a reduction in greenhouse gas emissions. Full details of the Statement of Overriding Considerations can be found in Attachment 1.

Planning Commission Action

On April 9, 2015, the San Luis Obispo County Planning Commission considered the proposed project. The Planning Commission unanimously approved the project and adopted the attached CEQA Findings of the CalFlats Solar project with minor changes to the conditions of approval and changes to the findings. A timely appeal of the Planning Commission's decision was filed by the Santa Lucia Chapter of the Sierra Club on April 23, 2015 (Attachment 2).

Appeal Issues

The appellant raised concerns that the proposed CalFlats Solar facility, including the access road improvements, has the potential to induce growth, and impede wildlife corridors or impact the natural flow of water. The appellant has also raised concerns regarding the mechanism by which the applicant would be acquiring conservation easements, and suggested alternative mitigation ratios for wetland habitat.

Issue 1. The appellant asks the Board of Supervisors to consider the potential growth inducing impacts of the project (including access road improvements) by introducing industrial development and disturbance in a previously pristine area and that the EIR should address ways in which the proposed project could foster economic or population growth.

***Staff Response:** The State CEQA Guidelines require that an EIR include a discussion of the ways in which a project could cultivate economic or population growth, or the construction of additional housing, either directly or indirectly. Depending upon the type, magnitude, and location of growth, a project may be growth-inducing (either directly or indirectly) if it fosters economic or population growth, removes obstacles to growth or burdens community service facilities to the extent that the construction of new facilities would be necessary. Draft EIR Section 6.1 (Growth-Inducing Effects) addresses the potential impacts resulting from the Project's construction and operational workforce (Draft EIR, pp. 6-1 to 6-2).*

The Draft EIR found that the project would require a maximum construction workforce of up to 816 employees per day, creating a temporary increase in population. The resultant demand for temporary accommodations during construction would create potentially significant impacts to the existing housing supply. The implementation of Mitigation Measure LT-1 would reduce the impacts to a less than significant level by implementing a Worker Housing Program (Draft EIR, pp 6-2). In addition, the project would generate an operational workforce of approximately 8 to 10 full time jobs. If all 8 to 10 full time workers were to relocate to within the project vicinity, it is anticipated that adequate housing would be available without exceeding the demands of the Monterey, San Luis Obispo, Fresno, and Kings Counties existing individual or combined housing supply.

The EIR found that the project's operational phase would not be growth-inducing as it would not significantly affect long-term employment opportunities or increase the region's population. Both the solar project within Monterey County and the proposed access road within San Luis Obispo County are consistent with the existing General Plan land use and zoning designations for the project site. As a result, the project does not require a General Plan amendment or zone change that would be considered precedent-setting for future industrial or other urban development in the project vicinity.

Lastly, the only permanent portion of the project within San Luis Obispo County's jurisdiction is the improvement to an existing, private agricultural road located entirely on private property, Jack Ranch. The proposed improvements to this existing access road would not be considered growth inducing, as they are located entirely on private property, and would serve to provide access only to the proposed project. The access road would not induce industrial or urban land uses that are not otherwise currently allowed under the Agriculture land use designation. If industrial or urban land uses that are not allowed in Agriculture land designation are proposed in the future, it may require a General Plan amendment and subsequent environmental review. The access road as currently proposed does not remove any obstacles to growth that would allow for industrial or urban land uses, as the road is existing and issuance of the Conditional Use Permit would allow for improvements to the road. Improvements include widening and installation of aggregate base, which similarly would not induce growth. Any land uses proposed under the current Agriculture land use designation would need to be consistent with the allowable or conditionally allowable land uses.

Issue 2. The appellant states the County should determine to what extent the road will be an impediment to wildlife corridors or impact the natural flow of water, and if it will be fenced.

Staff Response: The access road would not be fenced, as noted in the EIR p. 4.4-184 ("no new fencing would be installed along the Access Road..."). This would ensure that wildlife would be allowed to move freely across the access road. In addition, the EIR contains an analysis of the project's impacts on wildlife movement corridors for potentially affected species. EIR Section 4.4, Biological Resources, includes a study of an approximately 698-acre area around the access road, and specifically addresses the access road's potential impacts on wildlife movement corridors. The analysis of wildlife movement corridor impacts was based on a number of scientific sources, as listed in the Final EIR, that analyzed how the Cholame Valley and Carrizo Plain provide habitat and movement opportunities for wildlife. Based on this analysis, the EIR concluded that the impact on tule elk movement was less than significant, and that the impact on movement corridors for the San Joaquin kit fox and pronghorn antelope would be significant but mitigable. The EIR concluded that there was no compelling evidence that the project site itself serves as a distinct habitat linkage between known kit fox populations (core or satellite), or functions as a critical movement corridor that would be significantly disrupted by project development.

The EIR identifies a number of biological resource mitigation measures that will be implemented, such as preconstruction surveys for kit fox, the installation of kit fox-friendly fencing for the project-related enclosures, den avoidance measures, and the acquisition of compensatory mitigation lands that would reduce impacts to the kit fox movement corridor to less than significant levels. Similarly, the EIR identifies a number of mitigation measures that would reduce the project's impact on pronghorn antelope to a less than significant level, including the implementation of pronghorn-friendly fencing for project-related enclosures (again, no new fencing along the Access Road would be provided), and pronghorn calving ground avoidance and minimization measures. These mitigation measures are incorporated into the County's Conditions of Approval (COA) for the project (Attachment 1).

Further, the Final EIR analyzed the potential hydrology impacts associated with the access road, including the potential for the access road improvements to alter existing drainage patterns (EIR Section 4.9). This analysis was based on the Preliminary Drainage Report prepared for the project by RBF Consulting, Inc. (August 2013), which described the site's existing drainage characteristics and included preliminary modeling, and an Addendum to the Preliminary Drainage Report prepared by the Wallace Group (February 2014), which provides a description of watersheds and maps the watersheds that drain across the existing access road.

In general, the watersheds that drain across the access road include small defined channels and large storm flows that spread beyond the channels in wide and shallow flow paths. As stated in the EIR, the access road improvements required for the project would include the use of culverts to match the existing watershed characteristics. The Final EIR concluded that hydrology impacts related to alteration of existing drainage patterns would be less than significant, and, therefore, no mitigation is required.

In addition, the final design of the project would be required to be developed in accordance with Applicant Proposed Measure (APM)-11, which requires the applicant to prepare a final design level drainage analysis. This analysis would include a detailed evaluation of the potential drainage impacts associated with the project, including identification of measures to reduce runoff by promoting infiltration. These measures would be selected and configured as part of the final design considering local impacts from proposed improvements, and would be detailed in the grading plans and maintenance requirements.

Issue 3. The appellant asserts that the acquisition of conservation easements by providing funds is not sufficient and states the County should require the applicant to dedicate conservation easements.

Staff Response. The Final EIR contains a suite of mitigation measures for impacts to biological resources, including the acquisition of off-site lands that contain obligatory (biological) requirements and well-defined performance standards to ensure habitat impacts are offset, as required under CEQA. CEQA requires that mitigation of significant impacts be based on substantial evidence in the record and that the means of mitigation be deemed feasible.

The EIR concluded that impacts to biological resources could be reduced to less than significant levels, in part, through the implementation Mitigation Measure B-1 (a) (Nested Compensatory Mitigation). This mitigation measure requires the applicant to provide conservation easements either with the dedication of conservation easements or by providing funds for the acquisition of conservation easements. Per Mitigation Measure B-1 (a), if the applicant chooses to provide funds for the acquisition of conservation easements, in lieu of a dedication of conservation easements, the applicant would be required to provide funds to a qualified easement holder as defined in the mitigation measure. When funds are provided to a qualified easement holder, the easement holder uses those funds to dedicate land in perpetuity for conservation purposes, similar to a conservation easement. The funds must be sufficient to allow the easement holder to purchase enough land to meet the requirements of the mitigation measures. Qualified easement holders must be approved by the California Department of Fish and Wildlife. Minimum requirements of a qualified easement holder are; 1) Substantial experience managing conservation easements that are created to meet mitigation requirements for impacts to special-status species; 2) Adopted the Land Trust Alliance's Standards and Practices; and 3) A stewardship endowment fund to pay for its perpetual stewardship obligations. The applicant would be responsible for calculating the total acreages required to meet all compensatory mitigation obligations and submit these totals prior to the issuance of grading permits. The applicant would then be responsible for obtaining County approval of the location of mitigation lands, the holder of the conservation easements, and the restrictions contained in the easements created for the permanent protection of these lands.

Documentation of recorded easements would be required to be submitted to and approved by the County prior to the first of the project's final inspections, or within 12 months after issuance of grading permits, whichever comes first. Verification of having met habitat mitigation requirements would be reviewed and approved prior to final inspection.

Issue 4. The appellant asserts that the ratios for compensatory mitigation of wetland habitat determined by the Final EIR and incorporated in the County's COAs are inadequate.

Staff Response. Wetland features comprise a small portion of the Project. In particular, the access road includes: 0.02 acre of ephemeral stream habitat; 0.01 acre of seasonal wetlands; and 0.03 acre of perennial marsh (EIR pp. 4.4-34 to 36). No intermittent stream or perennial stream habitats occur within the access road disturbance area (EIR, pp. 4.4-34 to 35 and Table 4.4-2 on pp. 4.4-15). Two perennially flooded ponds occur near but outside of the access road and will therefore not be impacted (EIR p. 4.4-35). The Final EIR identifies potential impacts to this and other wetland habitat in the project site and concludes that the impacts are potentially significant but mitigable. Accordingly, the Final EIR requires wetland habitat mitigation measures to compensate for permanent impacts to wetland habitat.

Substantial evidence in the record shows that potential impacts to wetland habitat will be mitigated to less than significant levels. Mitigation measures include wetland avoidance and minimization measures [Mitigation Measure B-3(a)], a Habitat Restoration and Revegetation Plan (HRRP) [Mitigation Measure B-2(b)], and habitat mitigation [Mitigation Measure B-3(d)], among others. Under the wetland habitat mitigation measure, all permanently impacted wetlands will be mitigated at a ratio between 1:1 and 2:1. Temporary impacts will be mitigated through onsite restoration under mitigation measure B-2(b) as well as through compensatory habitat mitigation depending on the duration of the temporary impacts. All areas subject to temporary disturbance and requiring restoration actions under the HRRP would be required to be monitored for at least two years following construction.

Failure to meet pre-defined success criteria after two years of at least average annual rainfall would trigger remedial actions and under certain circumstances, including below-average rainfall years, a longer monitoring duration would be required until it could be determined that the restoration success does not require remedial actions and the site is not simply being affected by below-average rainfall.

The appellant does not dispute the conclusion in the Final EIR that impacts to wetland habitat were reduced to less than significant levels based on these mitigation measures. Rather, the appellant asserts the County should impose increased mitigation ratios. There is no statutory requirement for affected habitat to be compensated at any particular ratio of

preserved habitat to affected habitat, nor is there currently a standard mitigation ratio applicable to wetland habitat across the State or the County. The ratios set forth in the Final EIR and Conditions of Approval are appropriate given the magnitude of the project's potential temporary and permanent impacts to wetlands and would ensure no net loss of wetlands, and are supported by substantial evidence in the record.

Conclusion

The Planning Department recommends upholding the Planning Commission's approval of the project and denying the appeal by Sierra Club because the project is consistent with applicable goals and policies of the General Plan and the appeal issues raised have been addressed by the EIR and conditions of approval.

OTHER AGENCY INVOLVEMENT

The project was referred to: Public Works, Agricultural Commissioner, Building Division, Cal Fire, Caltrans, California Department of Fish and Wildlife, and U.S. Fish and Wildlife Service.

FINANCIAL CONSIDERATIONS

This Board of Supervisors appeal was processed using an appeal application fee of \$850.00 and Planning Department budget.

RESULTS

Affirming the Planning Commission's decision by denying the appeal will result in the approval of Conditional Use Permit (DRC2014-00015). This is consistent with the County's goal of promoting livable and prosperous communities.

ATTACHMENTS

1. Attachment 1 - Board of Supervisors Resolution
2. Attachment 2 - Appeal Letter
3. Attachment 3 – Applicant Response to Appeal Letter
4. Attachment 4 - Planning Commission Staff Report
5. Attachment 5 - Graphics
6. Attachment 6 - EIR Summary